

# Exhibit A

**DECLARATION OF RAQUEL SMALL**

I, Raquel Small, do state and declare as follows:

1. I am a Program Manager on the YouTube legal team. As part of my role, I have personal knowledge of YouTube's Terms of Service, including the facts described below, and, if called as a witness, could and would testify competently thereto.

2. YouTube offers an online video service where users around the world can share and watch videos and related content. With limited exceptions, YouTube is a free service and does not charge users to upload or view videos. To create a safe and vibrant community for its users, YouTube enforces rules prohibiting content that may be harmful or undesirable.

3. Use of YouTube's services is governed by a written Terms of Service Agreement ("TOS" or "Terms"). A true and accurate copy of the current TOS is attached hereto as **Exhibit A**. The TOS are also available at <[www.youtube.com/t/terms](http://www.youtube.com/t/terms)>, on the sidebar of the YouTube homepage, <[www.youtube.com](http://www.youtube.com)>, and elsewhere throughout the YouTube website. YouTube's TOS have been modified from time to time over the years.

4. The current version of the TOS, and all past versions of the TOS going back to February 2009, require that disputes between YouTube and its users arising out of their use of YouTube be litigated solely in Santa Clara County, California. The current version of the Terms provides as follows: "All claims arising out of or relating to these terms or the Service will be governed by California law, except California's conflict of laws rules, and will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA. You and YouTube consent to personal jurisdiction in those courts." This exact language was included in the previous three versions of the TOS, and has been effective between December 10, 2019 and the present.

5. As mentioned above, previous versions include similar language. For example, the version of the TOS in force on February 23, 2013 provides as follows in Section 14: "Any claim or dispute between you and YouTube that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Santa Clara County,

California.” A true and correct copy is attached as **Exhibit B**. The version of the TOS in force on February 6, 2015 contains identical forum-selection language. A true and correct copy of that version of the TOS is attached as **Exhibit C**. The version in force in November 2019 also includes identical forum-selection language. That version of the TOS is publicly available at <https://www.youtube.com/t/terms?archive=20180525>, and a true and accurate copy is attached as **Exhibit D**.

6. Because many millions of users from around the world use YouTube free of charge each day, the forum-selection clause is necessary to manage the costs of litigation and reduce the burden to YouTube of litigating all over the world.

7. Users are able to post content to their own “channels”. In order to create a YouTube channel, users are required to accept the TOS. Currently, users are informed that “By tapping Create Channel you agree to YouTube’s Terms of Service.” The words “YouTube’s Terms of Service” appear in blue font and include a hyperlink to the TOS. Below, there is a blue button labeled “Create Channel.” By clicking “Create Channel,” users agree to abide by the TOS.

8. Based on a review of YouTube’s records pertaining to the plaintiff “Sarah” in *Unknown Party v. Google LLC et al.*, 1:23-cv-00223-HYJ-SJB (W.D. Mich.), she created YouTube channels on February 23, 2013 and February 6, 2015. YouTube’s records reflect that when she did so, she affirmatively clicked a button indicating her acceptance of and agreement to be bound by the TOS.

9. YouTube also requires users to confirm their agreement to the TOS in other ways. For example, YouTube occasionally blocks a user from using the service until they affirmatively click a button indicating their agreement to the TOS. YouTube’s records reflect that this happened to “Sarah” on November 6, 2019 and November 25, 2019, and that she affirmatively clicked a button indicating her acceptance of the TOS again on those dates.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 12, 2023, in San Leandro, California.

A handwritten signature in black ink, appearing to read 'Raquel', followed by a long horizontal line extending to the right.

Raquel Small